**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 18 of 2006**
**with**
**CIVIL APPLICATION No. 128 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NAJERABEN ANWARHUSSAIN MALEK - Appellant(s)**
**Versus**
**MASTUBHAI JAKUMIYA MALEK & 1 - Defendant(s)**

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**Appearance :**
MRS SHILPA R SHAH for Appellant(s) : 1,
MR HASMUKH C PATEL for Defendant(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**
**Date : 07/04/2006**

**ORAL JUDGMENT**

The present appeal is filed by the appellant herein, original-applicant, challenging the judgment and order passed by the learned Additional District Judge, Fast Court No.4, Bharuch, dated 11th July 2005

in Guardian Application No. 7/2004 by which the learned Judge of trial Court has partly allowed the said application appointing the appellant as guardian of minor daughter Farhin only and not appointing the appellant original-applicant as guardian of her son Faiyashussain.

2. Appellant, original-applicant has one daughter Farhin and one minor Son Faiyashussain. The Faiyashussain is residing with his uncle since many years. Husband of the appellant died on 24.11.2003 and therefore she submitted an application being Guardian Application No. 7/2004 before the learned Additional District Judge, Fast Track Court No.5, Bharuch, and considering the evidence on record and the interest of the minor, the learned Judge of trial Court passed the order appointing the uncle of the said Faiyashussain as his guardian. Being aggrieved and dissatisfied with the same the appellant original-applicant has preferred the present Appeal.

3. Ms. Shilpa Shah, learned advocate appearing on behalf of the appellant has submitted that the

learned Judge of trial Court has materially erred in handing over custody of the minor child Faiyashussain to respondent No.1 (Uncle) and appointing him as legal guardian of minor though appellant as mother is alive. It is further submitted that the appellant as mother of the minor child is capable to take care of minor child Faiyashussain and therefore it is requested to quash and set aside the judgment and order passed by the learned trial Court Judge.

4. Shri Hasmukh Patel, learned advocate has taken this Court through the evidence on record and has submitted that on appreciation of evidence considering the interest of the minor the impugned order has been passed by the learned Judge of the trial court which is not required to be interfered with and therefore it is requested to dismiss the appeal. The learned counsel appearing on behalf of the parties have produced on record the entire evidence and the deposition of all the witnesses.

5. I have gone through the entire evidence. The statement of minor son Faiyashussain was also recorded. He has categorically stated that he is residing with his Uncle Mastubhai; he is taking his care as his son; and he has refused to go with his mother. On going through the evidence and the deposition of the said Faiyashussain, it appears that there are justifiable reasons for refusing him to go with his mother. Considering the evidence on record, it appears to the Court that it will be in the interest of the minor to give his custody to his uncle who is taking his care since many years and appointing the uncle as his guardian. Learned advocate appearing on behalf of the appellant is not in a position to satisfy this Court how the finding, given by the learned trial Court Judge, is contrary to the evidence on record. Considering the deposition and the evidence, it cannot be said that the learned Judge of the trial Court has committed any error in appointing the uncle as a guardian and handing over the custody of minor Faiyahussain to his uncle instead of the appellant. Under the circumstances, there is no substance in the appeal

and the same is required to be dismissed and is accordingly dismissed. Notice is discharged. However, there will be no order as to costs.

6. In view of dismissal of the First Appeal, no orders on the Civil Application No. 128 of 2006 and the same stands disposed of accordingly.

*[ M.R. Shah, J. ]*

*RMR.*